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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/760,648

01/20/2004

Fred P. Smith

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28049

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05/22/2007

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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/760,648		SMITH, FRED P.	
	<b>Examiner</b>		<b>Art Unit</b>	
	James Keenan		3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 12-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Line 11, "the flexible member wherein" is not understood.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 9, 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko (previously of record) in view of Podd, Jr. et al (hereinafter "Podd", US 5,564,891).

Safko shows a pickup truck having a bed in which is placed a flexible cargo carrying member 5 (first portion) having second portions 3, 4 extending therefrom such that in use they are placed under the rear wheels of the vehicle and captured thereby so that as the vehicle is backed up the member 5 is drawn rearwardly to discharge cargo in the bed. Safko also discloses an alternative embodiment where the member 5 is replaced by a simple mat (col. 2, lines 6-8).

Claims 1 and 11 as now further amended require the first portion to completely cover the cargo area and the second portion to not only connect to the first portion "proximate the second end" (of the cargo area) but also to extend therefrom "to pass around the second end to a location of capture between the at least one wheel and the supporting surface". Because the second portions 3, 4 of the flexible member 5 of Safko are connected to the end of the first portion proximate the front end of the cargo area but extend around the back end of the cargo area, these claim limitations are not met. However, in the embodiment in which a mat is used in place of the member 5, the second portions of the flexible member would likely be connected to the end of the first portion proximate the rear or "second" end of the cargo area. Applicant argues that there is no basis for this assumption, stating that even in this embodiment, it must be assumed that the mat functions in the same manner as the member 5. However, the mat would not function properly, if at all, if the second portions 3, 4 were connected to the end proximate the front of the cargo area, because in use the portions 3, 4 would likely pull the front end of the mat out from underneath the load, due to the insufficient rigidity of the mat. Applicant further argues that such a conclusion is based on conjecture and that the mat embodiment would function properly even if the belts were connected adjacent the front end of the mat. While the examiner remains of the opinion that the belts should be connected to the mat proximate the second end thereof in order for the apparatus to function properly, it is admitted that such a conclusion is beyond the literal scope of the Safko reference, and thus, in conjunction with applicant's amendment, these claims are not anticipated by Safko.

Nevertheless, these claims are deemed unpatentable in view of the teachings of Podd, which shows a flexible cargo bed liner in a truck, the liner including a first portion 104 completely covering the cargo area and a second portion 104b connecting to the first portion proximate the rear (second) end of the cargo area and extending therefrom so as to be captured by an unloading mechanism which pulls on the second portion to draw the liner rearwardly and thus discharge cargo disposed on the liner from the truck bed. It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Safko by attaching the second (belt) portion of the flexible member proximate the second (rear) end of the cargo bed, as shown by Podd, as this evidences the appropriate manner of connecting a first portion of a load underlying member in a truck bed to a second extending member used to pull the first member and the load thereon out of the bed.

Re claims 2 and 5, the rear bumper of Safko is considered a "friction reducing member", as broadly claimed, which would inherently be made of wood, metal, or some type of plastic polymer, elastomer, or composite.

Re claims 3 and 4, the vehicle of Safko is a pickup truck with a tailgate opening.

Re claim 6, although Safko does not disclose the friction reducing member as being made from polyethylenes or fluoropolymers, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Safko such that the friction reducing member was made from one of these materials, as it has been held that selecting a known material on the basis of its suitability for the intended use is an obvious matter of design choice.

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Re claim 9, the flexible member of Safko is made from canvas, which is a fiber.

Re claim 21, since Safko discloses that the vehicle has a tailgate which has been removed, it is considered to have a "tailgate in an open position", as broadly claimed. Note that the flexible member is only required to pass around the second end of the cargo area, not the tailgate.

5. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko.

Safko, as noted in the previous Office actions, shows the method essentially as claimed (particularly the mat embodiment) except that there is no explicit disclosure that a length of the first portion (i.e., the mat) passes under the second end of the cargo area during unloading. Insofar as the mat embodiment is believed to at least desirably, if not necessarily, connect the second portions of the flexible member to the mat adjacent the rear or second end of the cargo bed, it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the process of Safko such that a length of the first portion of the flexible member (the mat) passed under the second end of the cargo bed during unloading, as this would merely be an expedient means of discharging material from the mat. Note that the primary embodiment discloses (col. 1, lines 45-50) that the vehicle continues to be backed up in stages as material is removed from the cargo unit. Performing the same operation with the mat embodiment would virtually require a portion of the mat to pass under the second end of the cargo area, as that is the only way material at the front end of the mat could be accessed.

Applicant again argues that this is mere conjecture, stating that since the belts are 13 feet in length (in the primary embodiment), they must be connected to the front end of the cargo unit, even in the mat embodiment (implying that there would be no other reason for the belts to be so long). Even assuming that the belts would be this length in the mat embodiment (which assumption is not only without basis, but requires a further assumption that the apparatus would even work this way), the mat itself (i.e., the first portion) would still pass under (at least to some extent) the second end of the cargo area. This is because as the truck continues to back up and unload the material, the rear end of the mat would begin to hang down from the rear end of the truck bed and would eventually come into contact with either a portion of the unloaded material or the ground surface. Further backward movement would then cause at least a portion of the mat to pass under the rear end of the cargo bed. It is also noted that even if the belts were 13 feet long in the mat embodiment and connected to the front end of the mat, they would likely be connected not only to the front end, but also along the entire length of the mat, and thus to the rear end as well. This is believed to be the only way in which the belts could be connected to the front end of the mat and still present a properly functioning system. If the belts were connected in this manner, then clearly the claim limitations would be met, since the mat would "follow" the belts around the rear end of the cargo bed.

Re claim 19, although the portions 3, 4 are used to form a tailgate rather than covering the load, using these portions to additionally cover the load would have been

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obvious for one of ordinary skill in the art, as this would simply be a well known safety and security measure.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Safko in view of Podd, as applied to claims 1-5 above, and further in view of Pierce (previously of record).

The friction reducing member of Safko as modified is not a roller.

Pierce shows a pickup truck wherein a roller is attached to the rear end of the cargo area thereof to reduce friction when materials are loaded or unloaded to or from the bed.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified Safko with a roller as the friction reducing member, as suggested by Pierce, as this would improve the unloading operation. Note that the claims do not require the friction reducing member to reduce friction in any particular manner or between any particular elements.

7. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safko in view of Podd and Pierce, as applied to claim 7 above, and further in view of Kellogg (previously of record).

Safko as modified does not show the roller to comprise multiple sections.

Kellogg shows a similar truck-mounted roller comprising multiple sections 56, 58.



It would have been obvious for one of ordinary skill in the art at the time of the invention to have yet further modified Safko such that the roller comprised multiple sections, as shown by Kellogg, as this would be a mere duplication of parts which has been held to involve only routine skill.

Re claim 10, again, the selection of a known material on the basis of its suitability for the intended use is an obvious matter of design choice.

8. Applicant's arguments filed 3/19/07 have been fully considered but they are not persuasive. All arguments pertinent to previously presented rejections have been addressed above.

9. Applicant's arguments with respect to those claims not specifically argued above have been considered but are moot in view of the new ground(s) of rejection.

10. Claims 12-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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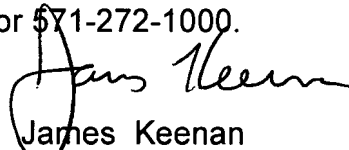
12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey can be reached on 571-272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
5/16/07